

**McNAIR & SANFORD, P.A.**

ATTORNEYS AND COUNSELORS AT LAW

MADISON OFFICE BUILDING/SUITE 400  
1155 FIFTEENTH STREET, NORTHWEST  
WASHINGTON, DC 20005

TELEPHONE 202/659-3900  
FACSIMILE 202/659-5763

CHARLESTON OFFICE  
140 EAST BAY STREET  
POST OFFICE BOX 1431  
CHARLESTON, SC 29402  
TELEPHONE 803/723-7831  
FACSIMILE 803/722-3227

COLUMBIA OFFICE  
NATIONSBANK TOWER  
1301 GERMAIS STREET  
POST OFFICE BOX 11390  
COLUMBIA, SC 29211  
TELEPHONE 803/798-9800  
FACSIMILE 803/799-9804

GEORGETOWN OFFICE  
121 SCREVEN STREET  
POST OFFICE DRAWER 418  
GEORGETOWN, SC 29442  
TELEPHONE 803/546-8102  
FACSIMILE 803/546-0096

GREENVILLE OFFICE  
NATIONSBANK PLAZA  
SUITE 601  
7 NORTH LAURENS STREET  
GREENVILLE, SC 29601  
TELEPHONE 803/271-4940  
FACSIMILE 803/271-4015

RALEIGH OFFICE  
RALEIGH FEDERAL BUILDING  
ONE EXCHANGE PLAZA  
SUITE 810  
POST OFFICE BOX 2447  
RALEIGH, NC 27602  
TELEPHONE 919/890-4190  
FACSIMILE 919/890-4180

SPARTANBURG OFFICE  
SPARTAN CENTRE/SUITE 306  
101 WEST ST. JOHN STREET  
POST OFFICE BOX 5137  
SPARTANBURG, SC 29304  
TELEPHONE 803/542-1300  
FACSIMILE 803/542-0705

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**APR 21 1994**

April 21, 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket No. 93-107  
Channel 280A  
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and eleven (11) copies of its "Opposition to Petition for Leave to Amend of ASF."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By:

  
Stephen T. Yelverton

Enclosure

B:CATON.136

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction  
Permit for a New FM Station,  
Channel 280A, Westerville,  
Ohio

To: The Review Board

)  
)  
) MM Docket No. 93-107

)  
) File Nos. BPH-911230MA

)  
) through

) BPH-911231MB  
)

OPPOSITION TO PETITION FOR  
LEAVE TO AMEND OF ASF

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: \_\_\_\_\_

Stephen T. Yelverton  
Attorneys for Ohio Radio  
Associates, Inc.  
1155 15th Street, N.W., Suite 400  
Washington, D.C. 20005  
Telephone: (202) 659-3900

April 21, 1994

B:CATON.136

OPPOSITION TO PETITION FOR LEAVE TO AMEND OF ASF

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.294 (b) of the Commission's Rules, hereby submits this opposition to petition for leave to amend. On April 15, 1994, ASF Broadcasting Corp. ("ASF") filed a "Petition for Leave to Amend" and related amendment.

ORA requests leave to file this opposition. Although the Commission has stayed or frozen the integration aspect of comparative hearings, the basic qualifying and non-integration aspects appear to remain unaffected. See, FCC Public Notice, FCC 94-41, released February 25, 1994. Because ASF's amendment raises certain basic qualifying and non-integration matters, a response is appropriate. In support of its opposition, ORA offers the following comments.

In its petition for leave to amend, ASF seeks to amend its application to report that its proposed tower site has been sold by Mid-Ohio Communications, Inc. to Spirit Communications, Inc. ASF further represents that it might receive "reasonable assurance" of the availability of the tower site from the new owner.

ORA opposes acceptance of the amendment until ASF supplies additional information about the sale of its proposed tower site. ASF fails to disclose when the tower site was sold. Moreover, ASF fails to state when it first became aware that the tower site had been sold.

Such information is necessary to determine whether ASF timely reported the loss of its tower site within thirty (30) days, pursuant to Section 1.65, and also whether it has acted with "due diligence" in obtaining "reasonable assurance" from the new tower site owner. See, National Communications Industries, 6 FCC Rcd 1978, para. 4 (Rev. Bd. 1991); Marlin Broadcasting of Central Florida, Inc., 5 FCC Rcd 5751, 5753, n. 9 (1990); Brownfield Broadcasting Corp., 88 FCC2d 1054, 1058 (1982).

Under established Commission precedent, a post-designation amendment can not be accepted if acceptance would require the specification of new issues and require additional hearings. See, Section 73.3522(b); Erwin O'Connor Broadcasting Co., 22 FCC2d 142, 143 (Rev. Bd. 1970). ASF has simply failed to provide sufficient information about the sale of its proposed tower site.

The amendment of ASF must not be accepted on another basis. A March 2, 1994, letter from the former tower site owner, Mid-Ohio, submitted by other applicants in this proceeding, indicates that ASF never had "reasonable assurance" from Mid-Ohio of its proposed tower site. The letter states in pertinent part that Mid-Ohio had only been "willing to negotiate" with ASF a "possible" lease of the tower site. However, a mere possibility that a site will be available is not sufficient. William F. and Anne K. Wallace, 49 FCC2d 1424, 1427 (Rev. Bd. 1974); National Communications Industries, para. 9. More than a vague "willingness to deal" is needed to constitute "reasonable assurance." Progressive Communications, Inc., 3 FCC Rcd 5758, 5759, para. 9 (Rev. Bd. 1988). See also, ORA's exceptions, paras. 82-84, filed December 20, 1993.


It is axiomatic that an applicant must have "reasonable assurance" of the availability of its proposed tower site at the time of initially filing its application. Rem Malloy, 6 FCC Rcd 5843, 5846, para. 15 (Rev. Bd. 1991); Adlai E. Stevenson IV, 5 FCC Rcd 1588, 1589, para. 7 (Rev. Bd. 1990); Radio Delaware Inc., 4 FCC Rcd 8630, 8631, para. 9 (Rev. Bd. 1989). Accordingly, unless ASF demonstrates that it had "reasonable assurance" of its proposed tower site at the time of initially filing its application, its amendment can not be accepted.

WHEREFORE, in view of the foregoing, the Review Board is requested to not accept the amendment of ASF.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By:

  
Stephen T. Yelverton  
Attorneys for Ohio Radio  
Associates, Inc.  
1155 15th St., N.W.  
Suite 400  
Washington, D.C. 20005  
202-659-3900

April 21, 1994

020970.00001  
ORA.422

**Fry & Waller Co., L.P.A.**

**Attorneys and Counsellors at Law**

35 EAST LIVINGSTON AVENUE, COLUMBUS OHIO 43215-5762

TELEPHONE 614/228-2300

FAX NO 614/228-6680

CARL B. FRY  
BARRY A. WALLER  
GEORGE R. MCCANN

ROBERT H. GRIFFIN, JR.  
BRYAN L. JEFFRIES

OF COUNSEL:  
DAVID M. BUDA

March 2, 1994

Charles W. Wilburn, Esq.  
210 S. Court Street  
Circleville, OH 43113

RE: Mid-Ohio Communications, Inc. / WBBY-FM / Lease of Assets

Dear Mr. Wilburn:

This correspondence is to advise you that all of the real estate and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which was utilized in regard to the broadcast operation of WBBY-FM has been sold to Spirit Communications, Inc. As you are aware, it has been over two years since the previous owner advised you that if you were awarded the construction permit for the frequency that the previous owner would be willing to negotiate with you regarding the possible lease of the real estate and/or personal property previously involved with the operation of the station. The previous owner has never been advised by you or anyone that a new constructive permit has been issued in regard to the frequency, and the real estate and personal property has now been sold. I am unaware of the new owner's intent in regard to the real estate or the personal property and if you wish to discuss the matter with the new owner, please contact Mr. John Shumate, Spirit Communications, Inc., 114 Dorchester Square, Westerville, Ohio 43081.

Since the real estate and personal property are no longer available for lease by Mid-Ohio Communications, Inc., or affiliated companies, you need to make appropriate arrangements as you deem necessary or as may be legally required in regard to your Application filed with the FCC. If you have any questions regarding this correspondence, please feel free to contact me.

Sincerely,

  
CARL B. FRY

/lt

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 21st day of April, 1994, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Opposition to Petition for Leave to Amend of ASF" to the following:

Joseph A. Marino, Chairman\*  
Review Board  
Federal Communications Commission  
Room 211  
2000 L Street, N.W.  
Washington, D.C. 20554


James Shook, Esquire  
Hearing Branch  
Federal Communications Commission  
Room 7212  
2025 M Street, N.W.  
Washington, D.C. 20554

Arthur V. Belenduik, Esquire  
Smithwick & Belenduik, P.C.  
1990 M Street, N.W.  
Suite 510  
Washington, D.C. 20036  
Counsel for David A. Ringer

James A. Koerner, Esquire  
Baraff, Koerner, Olender & Hochberg, P.C.  
5335 Wisconsin Avenue, N.W.  
Suite 300  
Washington, D.C. 20015-2003  
Counsel for ASF Broadcasting Corp.

Eric S. Kravetz, Esquire  
Brown, Finn & Nietert, Chartered  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036  
Counsel for Wilburn Industries, Inc.

Dan J. Alpert, Esquire  
Law Office of Dan J. Alpert  
1250 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Counsel for Shellee F. Davis

  
Stephen T. Yelverton

\*Hand Delivery